



Paper No. 5

Terry B. Morris
Minerals Technologies Inc.
One Highland Avenue
Bethlehem PA 18017

COPY MAILED

JUN 06 2002

OFFICE OF PETITIONS

In re Application of :
Donald Kendall Drummond : DECISION GRANTING-IN-PART
Application No. 09/826,062 : PETITION
Filed: April 4, 2001 :
Attorney Docket No. 96-006 D1 :

This is a decision on the petition filed March 27, 2002, requesting that the above-identified application be accorded a filing date of April 4, 2001, with four (4) sheets of drawings (Figures 1-4) as a part of the original disclosure.

On April 4, 2001, applicant filed the above-identified application. However, on January 28, 2002, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application," requiring drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on April 4, 2001, describes drawings containing Figures 1-4; however, it appears the United States Patent and Trademark Office (Office) did not receive these drawings.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims, e.g., claims 21-23. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the "Notice of Incomplete Application" mailed January 28, 2002, was sent in error and is hereby vacated. The application is accorded a filing date of April 4, 2001.

The petition is granted to the extent that the application will be accorded the filing date of April 4, 2001, without the drawings containing Figures 1-4 as a part of the original disclosure of this application.

Because applicant has not requested a filing date of March 27, 2002 (the date the drawings containing Figures 1-4 were filed), the drawings of Figures 1-4 filed on March 27, 2002, will not be entered. Any request to accord the application a filing date of April 23, 2001, with the four (4) sheets of drawings as part of the original disclosure is by way of petition under 37 CFR 1.182. Any such petition must be filed with the \$130.00 petition fee within **TWO (2) MONTHS** of the date of this decision to be considered timely. No extensions of time are available under 37 CFR 1.136(a).

Prior to the first Office action on the merits, applicant should file an amendment canceling all references to Figures 1-4 in the specification.

The application file is being returned to the Office of Initial Patent Examination for further processing with the filing date of April 4, 2001, and an indication in the Office records that "0" sheets of drawings were present on filing.

Any inquiries related to this decision should be directed to Petitions Attorney Christina Tartera Donnell at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Beverly M. Flanagan

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy